

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

AMERICAN PHYSICIANS
ASSURANCE CORPORATION,

Plaintiff-Counter-Defendant,

v.

DONALD JAMES HAM, M.D.,
ALAMOGORDO EYE CLINIC, INC.,

Defendants-Counter-Plaintiffs,

and THE ESTATE OF MARTHA
VALENCIA CARDON, DECEASED, by
and through Personal Representative
ELIZABETH ALVAREZ,

Defendant.

No. 1:08-cv-638 PK/ACT

ORDER

THIS MATTER comes on for consideration of Plaintiff APA's Notice of Objections to Defendants' Designated Deposition Testimony of various witnesses filed January 8, 2010 (Docs. 266, 267, 268, 269, 270). Upon consideration thereof, the court rules as follows:

A. Deposition Testimony of Ann Flood (Doc. 266).

DEPOSITION PAGE	LINES	RULING
10	5-8 & 13-25	Sustained

11	1	Sustained
12	16-25	Sustained
13	8-19	Sustained
20	9-13 & 20-25	Sustained
21	1-11	Sustained
43	7-15	Sustained
45	12-17	Sustained
46	19-22	Sustained
47	11-16 & 19-25	Sustained
48	1-6	Sustained
51	16-21	Sustained
52	1-10	Overruled
53	19-25	Overruled
54	1-12	Overruled
56	6-25	Overruled
57	1	Overruled
89	25	Sustained
90	1-25	Sustained
91	1-8, 11-14, 17-25	Sustained
92	1-7, 10-25	Sustained
93	1-11	Sustained
94	7-12, 17-25	Overruled
95	1-8	Overruled
95	15-25	Sustained
96	1-25	Sustained

97	1-25	Sustained
98	1-25	Sustained
99	1-17	Sustained
100	6-14	Overruled
102	5-25	Sustained
103	1-9, 12-25	Sustained
104	1-14	Sustained
126	25	Overruled
127	1-13, 20-25	Overruled
128	1-3, 11-13	Overruled
136	4-25	Overruled
137	1-15	Overruled
137	21-25	Sustained
138	1-25	Sustained
139	1-21	Sustained
149	20-25	Overruled
150	1-8	Overruled
150	15-19, 24-25	Sustained
151	1-4	Sustained
152	7-25	Sustained
153	1-6	Sustained
155	13-25	Sustained
156	1-25	Sustained
157	1-25	Sustained
158	1-9	Sustained

159	25	Overruled
160	1-25	Overruled
161	1-16	Overruled
168	12-25	Sustained
169	1	Sustained
172	15-25	Sustained
173	1-22	Sustained
180	25	Overruled
181	1-7	Overruled
196	8-25	Overruled
197	1-25	Overruled
198	1-6, 14-25	Overruled
199	1-7, 10-15	Overruled
199	18-25	Sustained
200	1-7	Sustained
200	9-25	Overruled
201	1-25	Overruled
202	1	Overruled

B. Deposition Testimony of Joe Grant (Doc. 267).

DEPOSITION PAGE	LINES	RULING
32	14-25	Sustained
33	1-18, 24-25	Sustained
34	1-3	Sustained

35	10-25	Sustained
36	1-7	Sustained
37	16-25	Sustained
38	1-16	Sustained
39	1-9	Sustained
40	10-25	Sustained
41	2-22	Sustained
43	13-18	Overruled
46	13-25	Sustained
47	1-11	Sustained
47	12-15	Overruled
48	5-17	Sustained
49	10-25	Sustained
52	3-19	Sustained
55	10-22	Sustained
56	18-25	Overruled
57	24-25	Overruled
58	1-25	Overruled
59	1-12	Overruled
60	1-2, 25	Sustained
61	1-10, 19-25	Sustained
62	1-13	Sustained
67	6-25	Sustained
68	1-13	Sustained
69	1-25	Overruled, but omit “about the Arik case” in line 4.

70	1-25	Overruled, but omit “in Arik case” in line 10.
71	1-3	Overruled
91	1-25	Overruled
92	1-25	Overruled
93	1-2	Overruled
93	3-5	Sustained
94	20-25	Sustained
95	1-2	Sustained
100	14-23	Overruled
109	1-25	Sustained
110	1-9	Sustained
137	1-23	Overruled
138	14-17	Overruled

C. Deposition Testimony of Bridget Rae (Doc. 268).

9	1-9	Overruled
27	3-21	Overruled
29	2-4, 9-16	Overruled
30	5-23	Sustained
31	11-25	Sustained
32	1-25	Sustained
33	1-25	Overruled
34	1-8	Sustained
34	24-25	Overruled

35	1-3, 11-18, 25	Overruled
36	1-14	Overruled
39	1-23	Overruled
39	24-25	Sustained
40	1-25	Sustained
41	1	Sustained
41	19-25	Overruled
42	1-25	Overruled
43	1-19	Overruled
44	8-25	Overruled
45	1-12, 23-25	Overruled
46	1-25	Overruled
47	1-5	Overruled
50	6-24	Sustained
56	16-19, 22	Overruled
57	1-10, 21-25	Overruled
58	1-14	Overruled
60	10-25	Sustained
61	1, 8-20	Sustained
61	21-24	Overruled
62	2-25	Overruled
63	1-8	Overruled
64	1-7, 21-25	Overruled
65	1-25	Overruled
66	1-25	Overruled

67	1-24	Overruled
67	25	Sustained
68	1-25	Sustained
70	13-17	Sustained
71	3-19, 24-25	Sustained
72	1-25	Sustained
73	1-22	Sustained
81	16-25	Overruled
82	3-5, 16-25	Overruled
83	1-16	Overruled
110	12-25	Overruled
111	1-25	Overruled
112	1-15	Overruled

D. Deposition Testimony of Kevin Clinton (Doc. 269)

19	1-25	Sustained
20	3-15	Sustained
28	9-25	Sustained
29	1-25	Sustained
37	1-6	Overruled
37	16-25	Sustained
38	1-8, 17-25	Overruled
39	1-10	Overruled
45	13-25	Sustained

49	2-25	Sustained
50	1-9, 17-20, 23-25	Sustained
51	1-25	Sustained
52	1-9	Sustained
52	18-25	Overruled
53	1-5	Sustained
53	9-25	Overruled
54	1-15	Overruled
138	9-22	Sustained
140	14-25	Sustained
141	1-3	Sustained
146	11-17	Sustained
147	8-25	Sustained
148	1-25	Sustained
149	1-25	Sustained
150	11-25	Sustained
151	1-4	Sustained
152	15-18, 22-25	Sustained
153	1-25	Sustained
154	1-25	Sustained
155	1-13	Sustained


E. Deposition Testimony of Catherine Shutack (Doc. 270).

APA objects on the grounds that Ms. Shutack will testify live at trial. The court will sustain the objection on this basis. As previously noted (Doc. 293), it is not

necessary to designate deposition testimony that will be used for impeachment of live witnesses.

IT IS SO ORDERED.

DATED this 8th day of March 2010, at Santa Fe, New Mexico.



United States Circuit Judge
Sitting by Designation